

**FREMONT SCHOOL DISTRICT
Public Hearing
January 22, 2010
6:30 P.M.**

**Laurence Pettengill Hall
Ellis School, 432 Main Street
Fremont, NH 03044**

I. CALL TO ORDER

Chairman Jeff Rowell called the January 22, 2010 public hearing to order at 6:30 PM at the Laurence Pettengill Hall at the Ellis School, 432 Main Street, Fremont, NH 03044.

II. ROLL CALL

Present were Chairman Jeff Rowell, Vice Chairwoman Peg Pinkham, Deb Genthner, Sharon Girardi, Ida Keane, and Superintendent Bill Lander.

Members of the public included:

Thomas W. McGall	564 Main Street
Jean Nygren	237 Copp Drive
Michael Nygren	237 Copp Drive
Lisa Fioravante	10 Pulaski Drive
Neil Rowland	68 Pond Lane
Scott Boisvert	(arriving @ 6:50 PM)
Keith Stanton	24 Birch Haven (arriving at 6:35 PM)
Linda Stanton	24 Birch Haven (arriving at 6:35 PM)
John Leva	24 South Road (arriving @ 6:45 PM)
Atty. Dean Eggert	

III. HEARING

The hearing was being held pursuant to NH RSA 49-B: 5(IV) and pertains to a citizens' petition to amend the School District Charter to implement official ballot voting in accord with NH RSA 40:13 (also known as Senate Bill 2) so that all matters are voted upon by ballot at the annual School District election.

Mr. Rowell read the text of the amendment:

“ School District of Fremont, NH. Each of the undersigned voters respectfully requests the School Board to provide for the amendment of the School District Charter as set out below.”
RSA 49-B: 5, III; RSA 197:5-b.e

“Shall the Fremont School District (SAU #83 Fremont NH) vote to adopt all provisions of SB2 voting (Official Ballot, RSA 40:13) on all issues before the Annual School District meeting?”

Mr. Rowell said that the petition was delivered to the SAU office, which then sent it to the Secretary of State Attorney General's office. The office approved the petition to move forward. The next step was having tonight's public hearing.

Mr. Rowell asked if anyone in the audience representing the citizens would like to speak.

Tom McGall said that he was not aware that this was a public hearing but he said he was one of the committee members and he said he would be willing to answer anything if he could.

Atty. Dean Eggert explained the process to follow after this hearing. Under RSA 49-B: 5 (amendment process), after the petition has been received, certified by the Clerk as being in order, the Board is required to give notice of a public hearing (which it did on time). After the hearing, the Board will make a motion to place this item on the ballot and to determine the date on which the election will take place. The issuance needs to occur within 7 days. In addition, there needs to be an opinion of legal counsel that the petition abides by the laws of the state of New Hampshire (e.g. that adopting SB2 is consistent with the law).

Mr. McGall asked if this hearing was published and Mr. Rowell said yes and that it was published in the newspaper as well as on the school Website.

Keith and Linda Stanton arrived at 6:35 PM.

Ms. Pinkham asked Atty. Eggert to repeat his information for the Stantons.

Atty. Eggert continued, saying that there would be either a special election or a special election in coincidence with another election. The Secretary of State's opinion is that Fremont could run a special election in coincidence with the State Primary. He noted that the public should be notified of the special election that would be held the same day as the State Primary if that were what is decided.

The three things that the Board would deliver to the clerk are: the opinion of counsel (that the amendment complies with the laws of the state of NH); a motion indicating when the Board wishes it to go on the ballot; and the specific ballot question.

Since the amendment can go on the State Primary ballot, Ms. Pinkham asked if there were a specific percentage of voters required. Atty. Eggert said that the simple requirement to amend the charter is a majority vote. He said that there is no stated statutory quorum.

Mike Nygren asked who gives the legal opinion. Atty. Eggert replied that the statute states that anyone on the bar of NH can issue the opinion. The petitioners can use their own attorney or they can ask the Board if they would authorize the use of their legal counsel to issue an opinion.

Mr. Nygren asked if this needed to be done within 7 days. Atty. Eggert said that if the petitioners felt "crunched" by the seven days, they could ask the School Board to continue the public hearing, which would be coincident with the amount of time the petitioners thought they needed to find that opinion.

Mr. Stanton read an email he got stating that the School Board apologized on the behalf of the School District Clerk if he was confused (about the amendment process). He stated that he was not confused and that he had previously received a letter from the School District Clerk stating he had to get the petition in by January 15, 2010 and also a letter from the Superintendent

regarding meeting the timeline to have the petition on the ballot on March 9. He said that the committee submitted it on January 7, 2010, which was before that deadline. Mr. Rowell said that this information was already reviewed with the School District Clerk at the meeting on January 11, 2010.

Mr. Rowell asked what Mr. Stanton recommended as a remedy. Mr. Stanton said that previously, he was not in favor of spending money on a special election, which would have to be done before June 1, 2010 in order to be able to correctly do it before the end of this year. He said that now he was for having a special election and have the cost come out of the Superintendent's pay since Mr. Stanton did not think the Superintendent "has done his job".

Ms. Keane said that the amendment would become effective upon passage, which would make it unnecessary to wait a whole year. Ms. Pinkham clarified that the amendment can go on the September 2010 ballot for vote during the State Primaries. She said that the current Board's consensus was that the amendment would go into effect in March 2011 if the vote passes in the September 2010 election. Mr. Stanton said they lose a year that way. Ms. Pinkham explained that, even if it was on this year's ballot, it would become effective the next School District voting day which would be the same (March 2011).

Ms. Pinkham clarified that the School Board does not hire the School District Clerk. She said that position is elected. She said that the people who were elected for the position declined so a person had to be selected in that case. Mr. Stanton showed that there is a School District Clerk position listed on the Fremont School District organizational chart.

Ms. Pinkham asked what else the School Board could do to help in the process. Mr. Stanton said that he would like to be able to trust the Board. Ms. Pinkham asked if it would help if the Board took a vote that if the SB2 amendment passes, it would be implemented the following year. Mr. Stanton said yes.

Jeanne Nygren asked if there would be a possibility for reconsideration that there were mistakes by individuals in order for the amendment to be on the ballot this March. Ms. Girardi said that the School Board did not have the power to do that. Atty. Eggert said that the Attorney General has to review each petition and their opinion said that they accepted the petition based on the fact that they meet the requirements of an acceptable petition and Warrant Article but that they weren't going to pass on the opinion as regards being lawful in the state of NH. Statute had a deadline of January 8 (60 days out and earlier of the March election). Atty. Eggert said that if the Board put it on the ballot, petitioners would be "exposed" to the risk that it could be easily reversed". He said that the Board is extending the courtesy of voting to make this effective earlier. He clarified that if the vote passes in September 2010, the March 2011 election would be an SB2 process. This means that the November 2010 budget for fiscal year 2011 will have a Budget Hearing, Deliberative Session and ballot voting.

Ms. Girardi asked if the vote taken by the current School Board tonight (to approve upon passage of vote in September) would need to be retaken if there are new School Board members at that time. Atty. Eggert said that tonight's vote will count because the Board will deliver to the Clerk a form of the amendments that will include a statement of the condition of the effective upon passage. The ballot question will be set after the public hearing and within 7 days. Ms. Keane read what the ballot question would state: to adopt the provisions of RSA 40:13 (SB2), to allow an official ballot voting on all issues of the Fremont School District (SAU 83) on the second Tuesday in March.

Ida Keane suggested that the Board make a motion to assure that if a majority vote is in favor of SB 2, it be effective upon passage.

Mr. Lander asked if the Board would need to come out of the hearing before making the vote. Atty. Eggert said yes but that it could be an anticipated motion.

Mr. Rowell asked if the petitioners had legal opinion. Mr. Stanton said that he was working with Atty. Eggert's company. He said he had a Taxpayers Association CNHT opinion that this process has been flawed. Mr. Stanton said that having a clerk last year would have helped. Mr. Rowell said that it is not constructive to continue that conversation.

Ms. Keane said that in order to take this to the next step in 7 days, legal opinion needs to be received. She clarified that the Board was asking if the petitioners would like to have their own counsel do this or have Atty. Eggert do this.

Atty. Eggert said that last year the Attorney General issued an adverse opinion to last year's amendment. In that opinion, it indicated that there is this amendment process. He said that there is only one step to do to get this on the ballot. Statute says that the Board has seven days to deliver an order to the Clerk but in order to do that, there needs to be a letter of opinion, not that the process was faulty, but that the amendment itself complies with the laws and constitution of the State of New Hampshire. Atty. Eggert said that the opinion would be a very simple line but that the petitioners need to decide what counsel they wanted to issue that opinion. He said that he is paid by the Fremont School District to do legal work pertaining to the District. He said that since this is a limited situation, the Board has authorized using Atty. Eggert's services this time to issue the opinion letter for the petitioners. Mr. Stanton said that he felt comfortable with that. Mr. McGall asked if the letter could be done tonight to meet the 7-day deadline. Atty. Eggert said that the letter would be short and would indeed meet the deadline. He added that even if the Board took longer than 7 days, it would not be held against the petitioner and it would still go on the ballot.

Ms. Nygren asked about the possibility of a fee being sent to the petitioners to pick up the tab of Atty. Eggert's services for the petitioners. Atty. Eggert said that he could not do that since he works for the School District so that the District would pay him with taxpayer money for the benefit of the petitioners. He said it would not be a big expenditure.

Ms. Pinkham noted that the District already spent multiple legal hours on this process last year and this year. Mr. Stanton felt that it was spent "fighting" the petitioners. Ms. Pinkham said that the attorney had addressed this. Mr. Stanton said that in January 2008, there was no Clerk to accept the petition. Atty. Eggert said that last year the petition was different and resulted in Fremont having to do three meetings a year: an "old-fashioned Town Meeting, an official ballot meeting and Deliberative Session.

Ms. Keane acknowledged that this has been a frustrating process on both the Board and the citizens' sides. She said it is a complicated process with guidelines to change the charter. She said they couldn't change what happened last year but that they could move forward and make sure they act on the behalf of a valid petition. Mr. Rowell said that he did not think that new Superintendent Bill Lander had done anything to "sandbag" the process.

Neil Rowland said that if the Board is doing everything possible to expedite the process this year, he would be willing to put the past behind them.

Mr. McGall said that if the Board took position of what the counsel had said, the amendment still would not go into effect until next year. He said that, based on past experience/mistakes, the Board is willing to expedite the petition that is in order now to make sure they don't have to wait an extra year, even though the Board did not have to allow that to take effect. He felt that Mr. Stanton should be commended on the work that he has done but he should put issues in the past and move forward and let the School Board vote to allow for passage of the amendment upon vote. Mr. Stanton said he could do that if he trusted the Board. Mr. McGall replied that if Mr. Stanton was skeptical then he was wasting people's time. Mr. McGall said that, by law that he read, the Board did not have to make the provision they are making, after all the animosity and issues within the Town. Mr. McGall said that Mr. Stanton should be able to let by-gones be by-gones and move forward. Mr. Stanton said he would do that.

Scott Boisvert asked what would happen if there are new School Board members in September. Mr. McGall said that Atty. Eggert already said that the motion stands. Mr. Boisvert asked if a citizen could think the petitioners did something illegal to make the vote go into effect sooner. Atty. Eggert said that the statute is clear that it either applies to the succeeding fiscal year or such earlier date determined by the Board. The earliest time the Board could pick was upon passage so that is what they picked at their discretion. This would not be subject to challenge since it is within the statute to be at the discretion of the Board.

Ms. Pinkham read: "Upon passage by a majority of the voters of the Fremont School District present and voting on the question at the (September Primaries), the provisions of this charter shall become effective upon passage."

Mr. Nygren asked if they had to make a vote to have Atty. Eggert write the opinion letter. Mr. Rowell noted that at least one petitioner (Mr. Stanton) said that it would be okay to have Atty. Eggert write the opinion letter.

Atty. Eggert said that, after motion was made, legal counsel would draft the letter of opinion and a packet would be sent to the Clerk to include the opinion of counsel, ballot question and final draft of the charter amendment.

7:15 PM: Public hearing closed since there was no more public input.

Peg Pinkham made a motion that the School Board vote to issue an Order to the District Clerk to schedule a special election, to be held simultaneously with the State primary election in September, 2010, for the purpose of voting upon the proposed Charter amendment which states "Shall the Fremont School District (S.A.U. 83) vote to adopt all provisions of SB 2 voting ("Official Ballot" – R.S.A. 40:13) on all issues before the annual school district meeting." Sharon Girardi seconded the motion. Motion passed 5:0.

Ms. Pinkham read:

"If approved, School Board will issue written Order to District Clerk, with correct form of ballot question, within 7 calendar days of January 22, 2010 hearing. School Board will also file a report with the District Clerk containing the final draft of the proposed amendment and a written opinion from an attorney admitted to the New Hampshire bar which states that the proposed amendment is not in conflict with the general laws or the Constitution of New Hampshire."

Peg Pinkham made a motion that, if SB2 passes in September 2010's special election, it will become valid upon passage. Deb Genthner seconded the motion. Motion passed 5:0.

Atty. Eggert mentioned that having the special election in September rather than November will give the School Board and Budget Committee time to formulate the budget.

IV. ADJOURNMENT

Peg Pinkham made a motion to adjourn at 7:20 PM. Sharon Girardi seconded the motion. Motion passed 5:0.

Respectfully submitted,
Susan Perry,
School Board Secretary